

# LEGAL AID

## CATALYST FOR SOCIAL CHANGE

### Editors

**Raman Mittal**  
Associate Professor  
Campus Law Centre  
University of Delhi

**K.V. Sreemithun**  
Student, III Year  
Campus Law Centre  
University of Delhi

Legal Aid Society  
Campus Law Centre  
University of Delhi

Satyam Law  
International

### Contents

<i>Foreword</i>		iii
<i>Preface</i>		vii
<i>Table of Cases</i>		xi
<b>Part-I: Concept and Objectives of Legal Aid</b>		
1. Socio-Legal Foundations of Free Legal Aid	<i>Meena Panickar</i>	3
2. Critical Appraisal of <i>Pro Bono Verito</i> Services at the Global Panorama	<i>Nipun Saxena</i>	12
3. Justice for All: Reading Literature as a Potent Source for Reflecting Lives that Need Legal Aid in Indian Society from Human Rights Perspectives	<i>Koyel Chakrabarty</i>	34
4. Concept of Legal Aid – An Effective Instrument for Achieving Social Justice	<i>Sukanta K. Nanda</i>	45
5. Legal Aid as an Instrument of Increasing Economic Efficiency of Access to Justice in the Justice Delivery System	<i>Ranita Nagar</i>	52
6. Concept of Legal Aid and its Functionality	<i>Santosh Kumar</i>	60
7. Legal Aid—The Present Indian Perspective	<i>Pragya Aishwarya</i>	72
8. Legal Aid in France and Germany	<i>Nitin Krishnan</i>	83
<b>Part-II: Scope of Legal Aid and Stakeholders' Contribution</b>		
9. Legal Aid Clinics in Law Schools: Ensuring Sustainability and Professionalism	<i>Ved Kumari</i>	95
10. Access to Justice and Legal Aid Reforms: Sensitising the Judiciary towards the Needs of the Poor	<i>Pallavi Bahar</i>	112
11. Legal Aid through Public Interest Litigation In India	<i>Asha Verma &amp; Ruchi Lal</i>	123
12. Role of Delhi Legal Services Authority towards Women Empowerment	<i>Poonam Verma &amp; Sumit Kumar</i>	132
13. Scope of Legal Aid and Stakeholders' Contribution: Role of Law Schools and Students	<i>Sanyukta Banerjee</i>	140
14. Role of Law Schools In Facilitating Legal Aid: A Critical Appraisal	<i>Gaurav Kataria &amp; Abhilasha Kataria</i>	148
15. Plea Bargaining and Role of Facilitators: Need for a Cautious Approach	<i>Nishant Kumar Srivastava</i>	156

## Part-III: Future of Legal Aid

16. Achieving Socially Relevant Legal Education through Rural Legal Aid Clinics	<i>Jane Schukoske &amp; Latika Vashist</i>	167
17. Restoring the Confidence of the People in Free Legal Aid Services in India	<i>Jeet Singh Mann</i>	190
18. Judicial Activism and Legal Aid: An Indian Experience	<i>Pallavi</i>	204
19. Role of Legal Aid in Tribal Conflicts: Legal Services in Non-Permissive Environments of North East India	<i>Debarun Baruah</i>	214
20. Yet Far From Justice: Institutionalised Inaccessibility to Legal Aid Services In India	<i>Seema</i>	221
21. Challenges In Legal Aid Movement In India	<i>Archana Mishra</i>	232
22. Legal Aid Movement in India: Challenge Response and the Way Forward	<i>K.V. Sreemithun</i>	245
23. Capacity Building in Legal Aid	<i>Raman Mittal</i>	252

## ACHIEVING SOCIALLY RELEVANT LEGAL EDUCATION THROUGH RURAL LEGAL AID CLINICS

Jane Schukoske\*  
Latika Vashist\*

### I. Introduction

The focus of this essay is on the reform of legal education to accelerate the empowerment of marginalized rural communities in India. Since most Indians live in rural India, and many rural communities are disadvantaged, it follows that law teachers and students should learn about, engage with and conduct research relevant to rural Indians.

Access to justice for the rural poor includes not only access to courts and legal redress mechanisms,<sup>1</sup> but also "good governance" including "transparency and accountability in the making of laws and process of their implementation and administration."<sup>2</sup> This article examines features of law clinic strategies to promote citizen participation, good governance and legal empowerment of rural Indians.<sup>3</sup>

\* CEO, Institute of Rural Research and Development, Gurgaon Haryana.

\* Assistant Professor, Jindal Global Law School, Haryana. The authors thank M.R.K. Prasad, Ajay Pandey, Anirban Chakraborty, Shashikala Gurpur, Rajeev Kadambi and Jonathan Gingerich for the comments and sources they kindly provided, and Shireen Moti and Shuvro Prosun Sarkar for research assistance.

<sup>1</sup> The Gram Nyayalayas Act, 2008 provides for "the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities." See The Gram Nyayalayas Act, 2008 (Act No. 4 of 2009), Preamble.

<sup>2</sup> Upendra Baxi, "The Renascent Access Notions: Globalization and Access to Justice", in Ayesha Kadiwani Dias & Gita Honwana Welch (eds.), *Justice for the Poor: Perspective on Accelerating Access* 72, 86-87 and note 36 (2009) (discussing new thinking about access to justice, including access to participation in governance processes and the right to transparency and accountability in government service delivery). Professor Upendra Baxi has worked for decades to guide legal education in India to be socially relevant. See Upendra Baxi, *Towards a Socially Relevant Legal Education* (1979); Arushi Garg, "Legal Education in India", (June 3, 2011), available at <http://lawandotherthings.blogspot.com/search/label/Legal%20Education%20and%20Research> (last viewed Oct. 2, 2011).

<sup>3</sup> The Institute of Rural Research and Development and Jindal Global Law School collaborate on one such experiment, *Sushasan Abhi* (Good Governance Now). Policy, Governance and Advocacy Center, Institute of Rural Research and Development (<http://www.smsfoundation.org/policyadvocacy.htm>) (last viewed October 2, 2011) (describing the Good Governance Now initiative and training); see also Jindal Global

Voices of Indian law teachers and students are calling for proactivity in addressing the needs of the poor. It is time to revive design and implementation of "socially relevant legal education." Some Indian law teachers are effectively implementing clinical legal education (CLE) in which students "learn by doing" under supervision. CLE has long been viewed as beyond reach because of curricular limitations, outdated pedagogy, teachers' lack of practical exposure and high teaching loads. This is a time for more collaborative thinking on how these efforts can rapidly grow.<sup>4</sup>

In the last two years, there has been a great deal of debate on the quality and future of Indian legal education and the Indian legal profession as a whole.<sup>5</sup> The addition of the All-India Bar Examination as a gatekeeper for the entry into the legal profession according to minimum competency standards can also be seen as a step to allow greater autonomy to law schools in setting their own curricula. Bar Council of India (BCI) established a Directorate of Legal Education that has proposed reforms<sup>6</sup> and has produced standards for BCI inspection of law

Law School Clinical Programs, available at [http://www.jgls.org/jg\\_cms.aspx?this=3&mid=182](http://www.jgls.org/jg_cms.aspx?this=3&mid=182); also see Ajay Pandey, "Experimenting with Clinical Legal Education to Address the Disconnect Between the Larger Promise of Law and its Grassroots Reality in India", 26 *Md. J. of Int'l Law* 101-124 (2011) (describing the Good Governance Now campaign as an experiment using clinical legal education methodology to engage citizens in the exercise of their rights to basic government services and in the development of their villages); Ajay Pandey and Sheena Shukkur, "Legal Literacy Projects: Clinical Experience of Empowering the Poor in India", in Frank S. Bloch (ed.), *The Global Clinical Education Movement* 245-49 (2010).

<sup>4</sup> As early as 1973, the Ministry of Law and Justice received a recommendation from its Expert Committee on Legal Aid to introduce clinical legal education to expose students to the actual legal problems of the poor. See Bruce A. Lasky and M.R.K. Prasad, "The Clinical Movement in Southeast Asia and India", in Frank S. Bloch (ed.), *The Global Clinical Education Movement* 45 (2010) (The clinical legal education movement has now taken root in countries around the world and has been recognized as a global movement). See also Frank S. Bloch and N.R. Madhava Menon, "The Global Clinical Movement", in Frank S. Bloch (ed.), *The Global Clinical Education Movement* 267-77, especially 272 (linking the rise of clinical education to the recognition by the legal academy through its curriculum and faculty/student activities the obligation owed by legal profession to the community).

<sup>5</sup> See N.R. Madhava Menon, "To go from mediocrity to excellence", *The Hindu* (June 18, 2010), available at <http://www.thehindu.com/opinion/lead/article470073.ece?homepage=true> (commenting on recent reports, debate, and challenges in legal education reform in India and calling for a coordinated plan of action by the Union Law Ministry, Union Ministry of Human Resource Development, Judicial Academies Bar Councils and legal educators to reform legal education).

<sup>6</sup> Bar Council of India, Reform of Legal Education in India: Note on Proposed Directions for Reform (July 21, 2010), available at <http://www.barcouncilofindia.org/about/legal-education/proposed-direction-for-reform-in-legal-education/> (last viewed October 1, 2011). See also Bar & Bench News Network, "BCI Chairman Gopal Subramaniam unveils Legal Education Reforms" (July 21, 2010), available at <http://barandbench.com/brief/2/852/bci-chairman-gopal-subramaniam-unveils-legal-education-reforms-only-5-year-law-courses-revised-curriculum-english-as-the-only-medium-of-instruction-changes-in-accreditation-of-law-schools> (last viewed October 6, 2011).

schools.<sup>7</sup> There is ongoing debate about what entity should be in charge of legal education, with critiques of the BCI and University Grants Commission (UGC) and the suggestion of creation of a new body for oversight.<sup>8</sup> Legal ethics rules were proposed.<sup>9</sup> A National Legal Knowledge Council composed of "legal luminaries" was established.<sup>10</sup> To inculcate a research culture in Indian law schools, legislation to establish Centres for Advanced Legal Studies and Research has been submitted.<sup>11</sup>

In the midst of all this activity, there have been a series of official actions taken at the national level that, properly taken forward according to their underlying policy goals, offer tools for better addressing the legal needs of rural India's impoverished<sup>12</sup> communities. These include:

<sup>7</sup> Bar Council of India, Inspection Manual 2010: Guideline for Inspection of Bar Council of India of University/Institution, available at <http://www.barcouncilofindia.org/about/legal-education/inspection-manual-2010/> (last viewed October 1, 2011).

<sup>8</sup> See, e.g., Bar Council of India, Final Report of 3-Member Committee Report on Reform of Legal Education 13 (2010), available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf> (stating as its focus, "[T]he present Report examines the two most crucial aspects concerning contemporary legal education in India: (a) The role of BCI as the primary body for regulating standards of professional legal education, and (b) The adequacy of the norms laid down by BCI in exercise of its statutory powers.").

<sup>9</sup> BCI Draft Code of Ethics (10 March, 2011), available at <http://www.barcouncilofindia.org/bci-seeking-viewssuggestions-on-the-draft-code-of-ethics/> (last viewed Oct. 6, 2011); see Kian Ganz, "BCI floats conflict rules, soft legal aid duty, ads and CFA ban in new Ethics code: seeks comments", available at <http://www.legallyindia.com/201103111904/Regulatory/bci-floats-conflict-rules-soft-legal-aid-duty-cfas-a-advertising-ban-in-new-ethics-code-invites-comments-within-week> (March 11, 2011) (last viewed Oct. 6, 2011); see also "Draft law for regulating legal professionals draws flak", *Law et. al. News Network*, available at <http://www.lawetnews.com/NewsDetail.asp?newsid=3624> (Bar Councils across different states have opposed the draft Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Act 2010).

<sup>10</sup> Bar Council of India, National Legal Knowledge Council 2010, available at <http://www.barcouncilofindia.org/about/legal-education/national-legal-knowledge-council/> (last viewed Oct. 4, 2011).

<sup>11</sup> See The Centres for Advanced Legal Studies and Research Bill, 2010, available at [http://www.indiaedunews.net/Law/Law\\_Ministry\\_proposes\\_to\\_set\\_up\\_6\\_centres\\_for\\_advanced\\_legal\\_studies\\_12260/](http://www.indiaedunews.net/Law/Law_Ministry_proposes_to_set_up_6_centres_for_advanced_legal_studies_12260/) (last viewed October 1, 2011). The Centres, proposed by the National Knowledge Commission, a high level advisory body that made recommendations on reform of India's higher education system, including legal education, have been lauded as helping to fill the research gap in the Indian legal academy. See Jindal Global Law School, Draft Concept Note for Consultation Discussion - Centre for Advanced Legal Studies and Research (1 July 2011) (reviewing the state of legal research in India, legal research output in India, and envisioning Centres that would create a legal research culture in India, including one on basic legal training and on continuing legal education and another on clinical legal education) (copy on file with the author).

<sup>12</sup> We use the word "impoverished" in recognition of the significant distinction between "poor" and "impoverished". See Upendra Baxi, "Introduction", in Upendra Baxi (ed.), *Law and Poverty: Critical Essays* vi (1998).

The resolution by Bar Council of India in October 2009 for legal aid clinics/centres to be established at all law colleges; The Law Minister's May 2010 statement of vision of the needs of the rural poor, among other marginalized populations, who may benefit from rural lawyering, public interest lawyering and paralegal services in support of legal aid and legal literacy;

- The authorization in August 2011 by National Legal Services Authority to District Legal Services Authorities to establish legal aid clinics in all villages or for a cluster of villages;
- The October 2011 recommendations of a Sub-Committee on the strengthening of community engagement by Higher Education Institutions to the Planning Commission of India for provisions in the Twelfth Five-Year Plan.

These recent official actions that hold potential for accelerating rural access to justice are briefly described in the following section. Section II features selected efforts of Indian law teachers and students working to empower rural communities through clinical legal education. Section III asserts that to be "socially relevant", Indian legal educators should embrace rural development as one aspect of Access to Justice. This entails realization of the promises made to the rural India by evolving a students-community relationship rooted in "pedagogy of suffering". Section IV discusses how the paradigm of Legal Empowerment can translate the goals of socially relevant legal education into practice, demonstrated by clinical legal education and good governance initiatives in rural India. The paper concludes with a call for cooperation to take the necessary steps to develop training and materials for the massive transformation required.

## II. Recent Developments Relevant to Socially Relevant Legal Education

### A. Each Law School/College is to have a Legal Aid Clinic

All law schools are now required to have legal aid clinics. As before, there are four required "papers" on clinical legal education in the mandated curriculum, but the requirement of having a legal aid clinic dates only from October 2009.<sup>13</sup> The requirement grew out of legal education review initiated by the Supreme Court of India in June 2009. In a matter related to affiliation of a law college with Bar Council of India, the Supreme Court issued an order requesting the Solicitor General, the President of the Bar Association and the Chairman, Bar Council of India, to look into the affiliation process, stating that "[i]t is a matter of common knowledge that before granting affiliation proper exercise is not carried out." This "3-Member Committee," as it was called, sought the views of legal education leaders on legal education reform and made recommendations to Bar Council of India. As part of this interaction, Bar Council of India passed a resolution on October 24, 2009 that "all law schools/colleges should establish a legal aid clinic/centre for the purpose of providing inexpensive and efficient justice to the needy sections

<sup>13</sup> The four compulsory clinical courses are Drafting, Pleading and Conveyance, Professional Ethics & Professional Accounting system, Alternate Dispute Resolution and Moot court exercise and Internship. Part II (B) Compulsory Clinical Courses, Bar Council of India, Rules on Standards of Legal Education and Recognition of Degrees in Law for purpose of enrolment as advocates and inspection of Universities for recognizing its degrees in law under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (111a), 49(1)(af), (ag), and (d) of the Advocates Act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils, S. 2, Definitions (2008) (hereafter "Rules of Legal Education - 2008").

of our society."<sup>14</sup> This is an important step in creating a network of legal aid clinics throughout India, with its 900+ law schools. The support that such a network of clinics requires is discussed later in this paper.

This legal aid clinic requirement has been incorporated into the Bar Council of India Inspection Manual 2010: Guideline for Inspection of Bar Council of India of University/Institution as follows:

### G. Legal Aid Clinic

24. Legal Aid Clinic: Each Institution shall have at least one community-based Legal Aid Clinic which shall function under a faculty, preferably who is or was practicing law.

25. Link up with District Legal Aid Center: Each District has a Legal Aid Program under the chairman of the District Judge. Guidance would be required to establish links with the Program and also with Lok Adalat organized under the Scheme.

Inspection has to be used as a means of participatory development especially of those institutions away from professional facilities so that professional skills can develop at every level.<sup>15</sup>

This language indicates that the law schools are given great flexibility in structuring legal aid clinics and that the law schools should be in communication with the District Legal Aid Center/Program, the District Judge and Lok Adalat organizers. The flexibility allows experimentation with various types of clinics and clinic focus according to local needs.

<sup>14</sup> *In the Matter of Bar Council of India v. Bonnie FOI Law College & Ors.*, Supreme Court of India Special Leave Petition No. 22337 of 2008, Final Report of the 3-Member Committee on Reform of Legal Education (2009), available at <http://www.barcouncilofindia.org/about/legal-education/report-of-supreme-court-appointed-committee-on-legal-education-reform/> (last viewed October 2, 2011). The Report noted that "rules for accreditation are contained in Rule 31 of the 2008 Rules, which identifies, inter alia, the following important academic criterion for the purposes of accreditation: ... status of Free Legal Aid centre and legal literacy program run by the Centre of Legal Education [law school/college]. *Id.* at 36. The Report states the basis for the requirement:

II. Establishment of Legal Aid Clinics/Centres: Apropos the principle enshrined under Article 39-A of the Constitution of India, the Bar Council of India, vide Resolution dated October 24 2009, resolved that all law schools/colleges should establish a legal aid clinic/centre for the purpose of providing inexpensive and efficient justice to the needy sections of our society. It was also resolved that a lecturer shall be the faculty incharge of a legal aid clinic/centre, and that final year students would be trained at such legal aid clinics/centres in imparting professional legal advice and client interaction. This Committee unreservedly endorses the Resolution passed by the Bar Council of India and recommends that establishment of such legal aid clinics/centres be made a pre-condition to the recognition of law colleges by the Bar Council. *Id.* at 51.

<sup>15</sup> Bar Council of India, Inspection Manual 2010: Guideline for Inspection of Bar Council of India of University/Institution. *Supra* note 7, at 36.



## B. A Vision Shared for Rural Access to Justice - delivery by rural lawyers, public interest lawyers, and paralegals

Delivering a vision statement on the future of legal education in India on May 2, 2010, then-Law Minister, M. Veerappa Moily, recognized the legal needs of the rural poor and promised to meet those needs through reform.<sup>16</sup> In mapping a broad agenda for reform,<sup>17</sup> he stated the need for legal education to teach lawyers to reach the needs of all the people of India:

The genuine grievance that the vast majority of the rural poor are not provided legal services appropriate to their needs and requirements shall be addressed. It is a fact that the law curriculum is focused on urban and corporate law practice - we shall respond to the unmet legal needs of the deprived sections of Indian humanity including tribals, Dalits, women, children and the disabled.<sup>18</sup>

The Law Minister acknowledged the need for special efforts to serve the rural masses: "An alternate programme for rural lawyering and public interest lawyering will be instituted to ensure that Access to Justice is a right guaranteed equally to the rural poor, who seem to be outside the formal system today."<sup>19</sup> With respect to expansion of legal aid and literacy programs, he said, "We will develop a system to create a cadre of paralegals in various sectors of legal practise who may then serve as legal secretaries and strengthen legal aid and literacy programs."<sup>20</sup> In fact, paralegal training programs have been established at law schools and other academic institutions.<sup>21</sup>

<sup>16</sup> The Vision Statement 2010-2012 of the Law Minister of India, published on June 2, 2010. The Ministry of Law and Justice, in collaboration with the Bar Council of India and National Law University, Delhi, held a National Consultation for Second Generation Reforms in Legal Education on 1<sup>st</sup> and 2<sup>nd</sup> May, 2010 at Vigyan Bhavan, New Delhi. Available at <http://www.barcouncilofindia.org/law-ministers-vision-statement-for-second-generation-reforms-in-legal-education/> (hereinafter "Vision") (last viewed October 1, 2011). The purpose was "to identify the major challenges the Legal Education is facing at present and to draw a roadmap for bringing radical institutional reforms in legal education to meet not only the requirements of the bar but the needs of trade, commerce and industry in view of growing internationalization of the legal profession." Available at <http://lawmin.nic.in/la/ncsgr.htm> (last viewed October 1, 2011).

<sup>17</sup> The Minister's discussion of reform encompassed the needs of all sectors of India. "The process of reform begins with assessing the country's needs that the legal profession seeks to fulfil - among others the requirements across the various levels of the judiciary; the gaps in the criminal justice system; the specific areas within the law which will require an increased number of practitioners in the near future. Our approach for reform has to be guided by a thorough and detailed understanding of the current shortcomings and the future needs of the system - it is only then can we define what our practitioners of law should be." Vision, *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Neha Chauhan, "Nalsar Hyderabad to start a paralegal course", *Legally India*, (13 Dec. 2010) <http://www.legallyindia.com/201012131607/Law-schools/nalsar-hyderabad-to-start-a-paralegal-course> (last

## C. Authorization to District Legal Services Authorities to establish legal aid clinics in all villages

The entity that bears the responsibility for providing legal aid services to eligible persons in India, National Legal Services Authority (NLSA), has also taken an important step to spread legal aid to rural communities across the country. NLSA issued a Notification<sup>22</sup> dated 10th August 2011 on National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. The notification was issued to address the problem of lack of access to justice for people in villages whom court-based legal services institutions did not reach.<sup>23</sup>

The regulations, which call for establishment of legal aid clinics in all villages/clusters of villages subject to the financial resources available, describe the operation of legal aid clinics, including staffing and record keeping.<sup>24</sup> The regulations state that they apply to legal aid clinics run by law students, law students may make use of NLSA legal aid clinics with the permission of the District Legal Services Authority, and law students may adopt a village for legal aid camps.<sup>25</sup> The Notification describes the role of the State Legal Services Authority, specifically authorizes final year students to render legal aid under the supervision of a faculty member<sup>26</sup> and allows trained paralegals to work in clinics.<sup>27</sup>

The recognition of law school legal aid clinics and the grant of permission to final year law students to render legal aid under faculty supervision clear bureaucratic obstacles that might otherwise have been raised. To implement the policy goals inherent in the Notification, it is essential for the law school, District Court judge and District Legal Services Authority to coordinate effectively.

## D. Planning to Mobilize Higher Education Institutions to Engage with Communities

In October 2011, a Sub-Committee formed to advise the Planning Commission of India recommended ways to strengthen community engagement by Higher Education Institutions

viewed Nov. 11, 2011)(describing a new paralegal programme, asserting that NALSAR had previously trained over 400 paralegals for various legal aid programmes in the state of Andhra Pradesh and reporting that IGNOU (Indira Gandhi National Open University) offers a paralegal course).

<sup>22</sup> National Legal Services Authority, National Legal Services Authority (Legal Aid Clinics) Regulations, 2011, The Gazette of India (August 18, 2011).

<sup>23</sup> U. Sarathchandran, "Bringing Legal Aid a Step Closer Home", *The Hindu* (Nov. 9, 2011) (Member-Secretary, National Legal Services Authority, New Delhi, discussing the paradigm shift in access to justice in Indian villages through provision of community-based volunteers from villages and other localities to provide basic legal services), <http://www.thehindu.com/opinion/lead/article2609718.ece?service=mobile> (last viewed Nov. 11, 2011).

<sup>24</sup> *Id.* at paras. 3 - 20.

<sup>25</sup> *Id.* at para. 22-23.

<sup>26</sup> *Id.* at para. 24(4).

<sup>27</sup> *Id.* at para. 25.

through provisions in the Twelfth Five-Year Plan.<sup>28</sup> The appointed Sub-Committee was composed primarily of academics and NGO representatives.

The creation of the Sub-Committee is recognition of the importance of systematic support for academic institutions to engage with communities in India. The shift of emphasis in community engagement from the level of the efforts of individual educators or institutions to a national higher education policy has the potential to channel support and incentives into socially relevant education generally.

The Sub-Committee recommended several initiatives to boost community engagement by academic institutions through networking, funding and policy change. First, it proposed both an "Alliance for Community Engagement," an active membership-based network that would promote ideas and practices of community engagement throughout India, and a funding and policy committee, the "Autonomous Empowered Committee on Community Engagement" to review funding proposals, design schemes to encourage community engagement, and set policy at the level of Planning Commission and University Grants Commission. Next, it recommended that higher education institutions be accorded more curricular flexibility in offering programs, courses and initiatives more relevant to the needs of society, and that due recognition for public intellectual engagement be given to faculty, students and institutions. Lastly, it recommended establishment of a few educational institutions to primarily engage in community-based and common knowledge traditions.

Law school engagement with communities can benefit from the networking, funding and policy directions of the recommendations, if adopted by the Planning Commission and ultimately supported by Ministry of Rural Development, Ministry of Agriculture, Ministry of Social Justice and Empowerment and Ministry of Health and Family Welfare.

### III. Efforts of Indian Law Teachers to Empower Rural Communities and to Network their Efforts

Indian law teachers from various law schools/colleges are indeed engaging students with rural communities. The programs meet the general definition of "legal empowerment programs" in that they "involve the use of legal services, legal capacity-building and legal reform by and for disadvantaged populations, often in combination with other development activities, to increase their freedom, improve governance and alleviate poverty."<sup>29</sup> That is, these law teachers are

<sup>28</sup> Sub-Committee member Dr. Rajesh Tandon has remarked that the establishment of the Sub-Committee is a sign of policy interest in youth and civic engagement. Rajesh Tandon, *Re-Affirming Civil Engagement of Education* (Sept. 19, 2011), available at <http://priaeducation.org/rajeshtandon-blog/> (last viewed October 6, 2011).

<sup>29</sup> Stephen Golub, "Focusing on Legal Empowerment", in Dias & Welch eds., *Justice for the Poor: Perspective on Accelerating Access* 381-82 (2009) (discussing legal empowerment at the community level as a strategy for international development in contrast to "Rule of Law orthodoxy" which focuses on

focusing clinical legal education on social justice - empowerment of and citizen participation in marginalised rural communities - rather than as a methodology to teach generally applicable lawyering skills that could be used in any law practice setting.

It is crucial that individual law teachers take such initiatives. In an inspiring book chapter entitled "Power of One: the Law Teacher in the Legal Academy," Professor Amita Dhanda makes a key point that a teacher can be a change agent towards social justice.<sup>30</sup> Professor Dhanda observed, "A disproportionate emphasis on structural reform prevents reflection by the individual person on the choices that he or she needs to make."<sup>31</sup> She asserted, "[t]he law academy has been unable to exclusively cast itself for the nation building role."<sup>32</sup>

The three efforts described here represent a sampling of the community-based work being undertaken by law teachers and students.<sup>33</sup> All three efforts network among law schools to accelerate the spread of clinical legal education work with rural communities.

#### A. Access to Justice Project: Seven-State Study of Law School-based Legal Services Clinics

V.M. Salgoacar Law College, highly regarded for the work of its Legal Aid Society that operates 35 Legal Aid Cells all over the state of Goa,<sup>34</sup> undertook a seven-state Access to Justice Project

structures in the formal legal system, such as courts and arbitration). See discussion in section IV of this paper.

<sup>30</sup> Amita Dhanda, "Power of One: the Law Teacher in the Legal Academy", in Amita Dhanda & Archana Parashar (eds.), *Decolonisation of Legal Knowledge* 261 (2009) (examining the importance of human agency and the disproportionate focus on structural reform in the context of legal education reform debate, and concluding that the autonomy of an individual law teacher is necessary for a work on social justice programs).

<sup>31</sup> *Id.* at 278.

<sup>32</sup> *Id.* at 263.

<sup>33</sup> This paper discusses selected efforts of Jindal Global Law School, Sonapat, Haryana; V.M. Salgoacar Law College, Goa; and W.B. National University of Juridical Sciences, Kolkata. Symbiosis Law College has provided reports on its community legal service work. Email from Dr. Shashikala Gupur, Principal, Symbiosis Law College, Pune, to Jane Schukoske dated Oct. 10, 2011 (on file with the co-author) (containing a report that a corpus fund has been created to support work in a cluster of villagers and a report on a Legal Aid and Awareness Camp held on Sept. 19, 2011 for which door-to-door surveys of villagers were conducted by Symbiosis law students to ascertain the legal topics of greatest concern and the agenda for the camp held for 125 villagers). Law school/college websites likely contain additional examples. The authors welcome reports on other efforts.

<sup>34</sup> V.M. Salgoacar Law College, Panaji, Goa (<http://www.vmslaw.edu/>) (last viewed October 2, 2011) (describing, on the "Clinical Legal Education" link from the home page, the work of its Legal Aid Society and other community engagement activities). The Law College received an "Institutional Excellence Award" from the Society of Indian Law Firms and Menon Institute of Legal Advocacy and Training. Kian Ganz, "Ranbir Singh awarded SILF's law teacher of the year prize, Salgoacar Law School, Symbi's Gudpur, AT Markose recognised", *Legally India* (August 26, 2011), available at <http://www.legallyindia.com/201108262301/Law-schools/ranbir-singh-awarded-silf-law-teacher-of-the-year-prize-salgaocar-law-school-symbis-gudpur-at-markose-recognised> (last viewed October 2, 2011).

through provisions in the Twelfth Five-Year Plan.<sup>28</sup> The appointed Sub-Committee was composed primarily of academics and NGO representatives.

The creation of the Sub-Committee is recognition of the importance of systematic support for academic institutions to engage with communities in India. The shift of emphasis in community engagement from the level of the efforts of individual educators or institutions to a national higher education policy has the potential to channel support and incentives into socially relevant education generally.

The Sub-Committee recommended several initiatives to boost community engagement by academic institutions through networking, funding and policy change. First, it proposed both an "Alliance for Community Engagement," an active membership-based network that would promote ideas and practices of community engagement throughout India, and a funding and policy committee, the "Autonomous Empowered Committee on Community Engagement" to review funding proposals, design schemes to encourage community engagement, and set policy at the level of Planning Commission and University Grants Commission. Next, it recommended that higher education institutions be accorded more curricular flexibility in offering programs, courses and initiatives more relevant to the needs of society, and that due recognition for public intellectual engagement be given to faculty, students and institutions. Lastly, it recommended establishment of a few educational institutions to primarily engage in community-based and common knowledge traditions.

Law school engagement with communities can benefit from the networking, funding and policy directions of the recommendations, if adopted by the Planning Commission and ultimately supported by Ministry of Rural Development, Ministry of Agriculture, Ministry of Social Justice and Empowerment and Ministry of Health and Family Welfare.

### III. Efforts of Indian Law Teachers to Empower Rural Communities and to Network their Efforts

Indian law teachers from various law schools/colleges are indeed engaging students with rural communities. The programs meet the general definition of "legal empowerment programs" in that they "involve the use of legal services, legal capacity-building and legal reform by and for disadvantaged populations, often in combination with other development activities, to increase their freedom, improve governance and alleviate poverty."<sup>29</sup> That is, these law teachers are

<sup>28</sup> Sub-Committee member Dr. Rajesh Tandon has remarked that the establishment of the Sub-Committee is a sign of policy interest in youth and civic engagement. Rajesh Tandon, *Re-Affirming Civil Engagement of Education* (Sept. 19, 2011), available at <http://priaeducation.org/rajeshtandon-blog/> (last viewed October 6, 2011).

<sup>29</sup> Stephen Golub, "Focusing on Legal Empowerment", in Dias & Welch eds., *Justice for the Poor: Perspective on Accelerating Access* 381-82 (2009) (discussing legal empowerment at the community level as a strategy for international development in contrast to "Rule of Law orthodoxy" which focuses on

focusing clinical legal education on social justice - empowerment of and citizen participation in marginalised rural communities - rather than as a methodology to teach generally applicable lawyering skills that could be used in any law practice setting.

It is crucial that individual law teachers take such initiatives. In an inspiring book chapter entitled "Power of One: the Law Teacher in the Legal Academy," Professor Amita Dhanda makes a key point that a teacher can be a change agent towards social justice.<sup>30</sup> Professor Dhanda observed, "A disproportionate emphasis on structural reform prevents reflection by the individual person on the choices that he or she needs to make."<sup>31</sup> She asserted, "[t]he law academy has been unable to exclusively cast itself for the nation building role."<sup>32</sup>

The three efforts described here represent a sampling of the community-based work being undertaken by law teachers and students.<sup>33</sup> All three efforts network among law schools to accelerate the spread of clinical legal education work with rural communities.

#### A. Access to Justice Project: Seven-State Study of Law School-based Legal Services Clinics

V.M. Salgoacar Law College, highly regarded for the work of its Legal Aid Society that operates 35 Legal Aid Cells all over the state of Goa,<sup>34</sup> undertook a seven-state Access to Justice Project

structures in the formal legal system, such as courts and arbitration). See discussion in section IV of this paper.

<sup>30</sup> Amita Dhanda, "Power of One: the Law Teacher in the Legal Academy", in Amita Dhanda & Archana Parashar (eds.), *Decolonisation of Legal Knowledge* 261 (2009) (examining the importance of human agency and the disproportionate focus on structural reform in the context of legal education reform debate, and concluding that the autonomy of an individual law teacher is necessary for a work on social justice programs).

<sup>31</sup> *Id.* at 278.

<sup>32</sup> *Id.* at 263.

<sup>33</sup> This paper discusses selected efforts of Jindal Global Law School, Sonapat, Haryana; V.M. Salgoacar Law College, Goa; and W.B. National University of Juridical Sciences, Kolkata. Symbiosis Law College has provided reports on its community legal service work. Email from Dr. Shashikala Gupur, Principal, Symbiosis Law College, Pune, to Jane Schukoske dated Oct. 10, 2011 (on file with the co-author) (containing a report that a corpus fund has been created to support work in a cluster of villagers and a report on a Legal Aid and Awareness Camp held on Sept. 19, 2011 for which door-to-door surveys of villagers were conducted by Symbiosis law students to ascertain the legal topics of greatest concern and the agenda for the camp held for 125 villagers). Law school/college websites likely contain additional examples. The authors welcome reports on other efforts.

<sup>34</sup> V.M. Salgoacar Law College, Panaji, Goa (<http://www.vmslaw.edu/>) (last viewed October 2, 2011) (describing, on the "Clinical Legal Education" link from the home page, the work of its Legal Aid Society and other community engagement activities). The Law College received an "Institutional Excellence Award" from the Society of Indian Law Firms and Menon Institute of Legal Advocacy and Training. Kian Ganz, "Ranbir Singh awarded SILF's law teacher of the year prize, Salgoacar Law School, Symbi's Gudpur, AT Markose recognised", *Legally India* (August 26, 2011), available at <http://www.legallyindia.com/201108262301/Law-schools/ranbir-singh-awarded-silf-law-teacher-of-the-year-prize-salgaocar-law-school-symbis-gudpur-at-markose-recognised> (last viewed October 2, 2011).

entitled, "A Study of Law School based Legal Service Clinics" in Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh.<sup>35</sup> As a part of the project funded by the Department of Justice, Ministry of Law and Justice, Government of India, and United Nations Development Fund Project on Access to Justice for Marginalized People, V.M. Salgoacar Law College gathered information through structured questionnaires and follow-up telephone interviews on the organization and work of legal services clinics at 39 representative law schools of the 434 law colleges in the seven states.<sup>36</sup>

The study revealed that the law schools studied had legal aid clinics, but that the activities that are undertaken by these clinics are below satisfactory.<sup>37</sup> The report sets out comprehensive recommendations to and targets for law colleges, Government of India, Bar Council of India and Legal Services Authorities, University Grants Commission, and the National Human Rights Commission to make functional 35 clinics in the seven states.<sup>38</sup> It urged that the stakeholders network to improve access to justice for the poor, suggested methods and shared examples of organizations that have effective networks.<sup>39</sup>

Professor M.R.K. Prasad, who spearheaded the project, cited as one of the achievements of the national conference under the project on 4-5 July 2011 in Goa the bringing to one platform the Ministry of Justice, Bar Council of India, National Legal Services Authority, law faculty and law students.<sup>40</sup> The National Legal Services Authority issued a Notification calling for establishment

<sup>35</sup> Department of Justice, Ministry of Law and Justice, Government of India, and United Nations Development Fund Project on Access to Justice for Marginalized People, A Study of Law School based Legal Service Clinics (2010) (hereinafter, "GOI/UNDP Clinic Study"). The scope of the study was defined as follows: "The study assesses the state of Legal Service Clinics across Law Schools and Colleges in India, including whether they exist, the kind of activities they undertake, the frequency of such activities, the quality of the services rendered, the percentage of the student population that participates in these activities and the frequency of interaction with the community outside the college, specially the marginalized community. The study also focuses on collating national and international good practices relating to such Clinics." *Id.* at 12.

<sup>36</sup> GOI/UNDP Clinic Study, *id.* at 13-15. In addition seven institutions in other parts of India and twelve foreign law schools (five in USA, two in Australia and five in South Africa) were also studied to provide some benchmarks and models. *Id.* at 15-16.

<sup>37</sup> The GOI/UNDP Clinic Study states that "...several Law Colleges started Legal Aid Cells in their campuses. Though this is a welcome step towards providing access to justice to the marginalized, majority of the Clinics were started only as a formality to fulfill the mandatory requirement. Conclusion was arrived at, based on the fact that the Clinics have no proper structure, place, no policy of the Clinic on the number of students in the Clinic, the kind of services they would extend, no workload credit to the faculty, no academic credit to the student, and most of the activities of the Cells are restricted to a few Legal Literacy Camps." *Id.* at 45.

<sup>38</sup> *Id.* at 74-90.

<sup>39</sup> *Id.* at 88-89.

<sup>40</sup> Email from M.R.K. Prasad, Professor and Head, V.M. Salgoacar Law College, Goa, to the author (July 7, 2011) (on file with the author). The proceedings of the conference are in Annexure IV to the GOI/UNDP Clinic Study, *supra* note 35, at 109-133.

of legal aid clinics in all villages/clusters of villages, as discussed in Section II above, in August 2011.<sup>41</sup>

## B. Good Governance Now: Legal Empowerment Training for Rural Villagers

The Institute of Rural Research and Development (IRRAD), an initiative of the S.M. Sehgal Foundation which is a charitable trust registered in India, began a campaign for 'Good Governance Now' in Mewat District of Haryana in 2008 to empower villagers to participate in the development of their communities. Using clinical legal education methodology, IRRAD trains rural villagers in their locality about government programs enacted to help them. The training explains the right to information and the proper channels for following up on applications that become stuck in the system. Armed with knowledge acquired over the course of the year-long training, villagers monitor the functioning of local government and share their findings at periodic feedback sessions.<sup>42</sup> Residents of over 200 villages have been trained as of December 2011.

To conduct the training, IRRAD staff partner with law students and their teachers at Jindal Global Law School (JGLS).<sup>43</sup> Prof. Ajay Pandey, who had conceived of the good governance project while working at IRRAD, secured JGLS approval to establish a Good Governance and Citizen Participation Clinic (the Clinic).<sup>44</sup> For the training, IRRAD has published brochures in the local language, Hindi, drafted by law students on government schemes and the Right to Information. The Clinic supports the efforts of villagers in several ways besides the governance training, including through panel discussions with government officials, policy advocacy based on problems identified in the field, staging of legal aid camps in villages, and responses to instances of bribe-seeking and other forms of corruption that villagers encounter.<sup>45</sup>

Prof. Pandey describes the dynamics between the students and the villagers as mutually beneficial and mutually reinforcing:

The support of the Clinic bolsters community participation in effecting good governance and makes such participation more authoritative and effective. The Clinic brings both technical support and commitment to the experiment's efforts. The support of the Clinic also firms up the motivation of villagers as they see their initiatives reaching logical conclusions. At the same time, this experiment has dual learning purposes for the students. On the one hand, they use the methodology of CLE [clinical legal education], as

<sup>41</sup> *Supra* note 22 and accompanying text.

<sup>42</sup> Feedback in August 2011 included, for example, whether the distribution of food grains, sugar and kerosene are provided on time and in the quality required by law; whether the school lunches cooked follow approved lunch menus; whether public day care is properly provided; and whether Below Poverty Level households receive electric connections to which they are entitled.

<sup>43</sup> Jindal Global Law School of O.P. Jindal Global University, Sonapat, Haryana ([www.jgu.edu](http://www.jgu.edu)).

<sup>44</sup> Pandey, *supra* note 3, at 119.

<sup>45</sup> *Id.* at 120-121.



part of the Clinic, to support the experiment. On the other hand, they see this methodology put into action by the trainee villagers.<sup>46</sup>

IRRAD and JGLS seek to replicate the NGO-law school-community model through conferences, publications and research on its impact. They host an annual conference on Good Rural Governance and Citizen Participation and in 2011-12 are holding regional conferences across India.<sup>47</sup> To support 'Good Governance Now' partnerships, IRRAD and JGLS offer training to interested NGOs and academic institutions to deliver training and support to rural communities. IRRAD's Rural Research Center and JGLS' Clinical Programme also host fellowship recipients and other visitors engaged in research/teaching on rural development and governance.

For long-term sustainability of the governance program, IRRAD and JGLS envision that law school clinics, legal services authorities and NGOs can network to ensure that rural access to justice is realized.

### C. West Bengal National University of Juridical Sciences Legal Aid Society

Inspired by the IRRAD/JGLS model, the Legal Aid Society of West Bengal National University of Juridical Sciences (NUJS), Kolkata, began a good rural governance project in 2011.<sup>48</sup> In addition to good governance training, the project is designed to deliver free legal aid to rural communities<sup>49</sup> and to network "law schools in West Bengal for undertaking a concerted effort in improving the free legal aid delivery of the state."<sup>50</sup>

<sup>46</sup> *Id.* at 121.

<sup>47</sup> In 2011, Regional Good Governance and Citizen Participation Conferences have been held at Assam University, Silchar; JSS Law College, Mysore, Karnataka; and Chanakya National Law University, Patna, Bihar.

<sup>48</sup> NUJS Legal Aid Society initiated a project to ensure effective rural governance in two villages of District North 24 Pargana, West Bengal from August, 2011. E-mail from Prof. Anirban Chakraborty to the author dated September 23, 2011 (on file with the author).

<sup>49</sup> "This project primarily aims to actively engage in sustained training and capacity building to deliver free legal aid and services to rural communities of West Bengal. The project intends to engage in activities to generate legal awareness and knowledge about legal institutions among the rural people and assist them to develop their capacity to use these legal tools to ensure effective and transparent governance in their area." NUJS, Legal Aid Society, "Project Proposal: Effective Rural Governance and Access to Justice" 2 (unpublished 2011) (copy of file with the author).

<sup>50</sup> *Id.* at 3. The main objectives of the project are:

1. Securing access to law and legal institution for villagers
2. Capacity Building and legal literacy for local communities, volunteers of NGOs and other interested people
3. Mobilizing people for social action through legal process
4. Bridging the gap between the Public institutions for delivery of free legal aid and the seekers of free legal aid
5. Expanding the reach of free legal aid delivery system to grass-root level
6. Linking NUJS with the national free legal aid movement

NUJS Legal Aid Society is working on a number of fronts to promote legal aid and clinical education activity in West Bengal and the Northeast. Besides specific Legal Aid Society client-based projects, the Legal Aid Society has held intra-state and national conferences on the topic, has worked closely with West Bengal Legal Services Authority, has facilitated several conferences at Assam University, Silchar, Law Department and helped the Law Department of North Eastern Hill University in Shillong, Meghalaya, establish a Legal Aid Clinic.<sup>51</sup>

Undoubtedly there are many other efforts by law schools, colleges and departments to provide legal aid to disadvantaged communities. There would be a benefit to cataloguing the various models to identify and share best practices so that they can be studied, adapted and replicated.

### IV. Introducing Rural Development in Legal Education as an Aspect of Access to Justice

Socially relevant legal education should result in legal service competency for all sectors of society. Certainly it must respond to the needs of India's rural majority and contribute to rural development. To achieve this end, some pertinent questions must be addressed: how should the legal system serve the underprivileged? How can lawyers facilitate legal empowerment of citizens to meet their basic needs and lead a dignified life? How can the contemporary understanding of law education as "justice education" and "value education"<sup>52</sup> enable us to conceptualize the programmes, curriculum and pedagogies of legal education needed to empower rural communities? This section of the paper reflects on these issues to address the gaps in contemporary legal education and its inadequate attention to the needs of rural communities.

In the review of legal education undertaken by the UGC in 1975, Professor Upendra Baxi discussed the expression "social relevance" with insight that still holds significance today. Interpreting the term in light of the societal condition of many people in the nation, Professor Baxi stated:

Social relevance requires at least that a curriculum cognizes the principal contemporary problems and the corresponding tasks before law and lawyers. Can a law curriculum be socially relevant and yet ignore the fact that India is an overwhelmingly a rural economy? Or that it is country full of underprivileged, exploitation and destitution?<sup>53</sup>

7. Providing NUJS student an opportunity to learn law through practice

8. Networking among law schools in West Bengal for undertaking a concerted effort in improving the free legal aid delivery of the state.

<sup>51</sup> NUJS, The Legal Aid Society, Legal Aid Activities for 2010-11, Convener's Report, available at <http://www.nujs.edu/nujs-legal-aid-society.html> (last viewed October 3, 2011).

<sup>52</sup> Bar Council of India, Draft Report of the Curriculum Development Committee, 2010 (Volume I), available at <http://www.barcouncilofindia.org/wpcontent/uploads/2010/06/CurriculumDevComdraftReport.pdf> (last accessed 19th December, 2011).

<sup>53</sup> Upendra Baxi, Towards a Socially Relevant Legal Education 9 (1979) available at <http://www.upendrabaxi.net/documents%5CNotes%20towards%20a%20socially%20relevant%20legal%20education.pdf> (last accessed 18th December, 2011).

India may not be "overwhelmingly a rural economy" today, but the majority of its population still resides in rural areas. Moreover, owing to increasing urbanization and a disproportionate focus of the state on city infrastructure to constitute a modern India, rural India suffers neglect, exploitation and destitution. This is the case despite substantial commitment of resources. "The total budgetary allocation for all rural development programmes by the Government of India in 2009-10 was Rs 74,270 crore, which accounted for 31 per cent of the total Central Budget Plan provision."<sup>54</sup> According to official estimates, however, 28.3% of the rural population in India still lives below poverty line.<sup>55</sup>

Laws provide for rural development programmes to secure basic needs to the people. They include the Mahatma Gandhi National Rural Employment Guarantee Act, the Swarnjayanti Gram Swarozgar Yojana (employment); the Indira Awaas Yojana (housing); Total Sanitation Campaign (toilets); the National Rural Drinking Water Programme; the Integrated Watershed Management Programme (watershed development); the Pradhan Mantri Gram Sadak Yojana (road connectivity); the Rajiv Gandhi Grameen Vidyutikaran Yojana (electrification), and the National Social Assistance Programme, the Indira Gandhi National Widow Pension Scheme and the Indira Gandhi National Disability Pension Scheme (social security).

Despite the laws and budgetary allocations, many eligible people suffer "multi-dimensional poverty".<sup>56</sup> They lack a decent standard of living, indicated by clean drinking water, sanitation, clean cooking fuel, adequate housing, electricity, and housing with floors; and education and health.<sup>57</sup> Lack of awareness of rights and how to assert them is one gap in implementation. There is widespread understanding of "leakage" of funds – corruption – that undermines these important schemes that provide basic human rights. Law schools should inspire and equip law students and lawyers to take the steps necessary to enforce these basic human rights.

To aid in implementation of development schemes as a form of human rights practice, lawyers and students use their knowledge of law to educate on rights and administrative procedures, to collaborate on community development, and to bring to light and question wrongdoing in scheme administration. The Law Minister's 2010 Vision Statement alluded to these roles.<sup>58</sup>

<sup>54</sup> Planning Commission of India, *Mid-term Appraisal Report of Eleventh Five Year Plan (2007-2012)* 251 (2011).

<sup>55</sup> *Id.* at 8.

<sup>56</sup> United Nations Development Programme (UNDP) introduced the 'Multi-dimensional Poverty Index.' It assesses poverty using three household-level indicators: health, education and standard of living. UNDP, Human Development Report, 2010 available at [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Complete\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf).

<sup>57</sup> *Id.*

<sup>58</sup> See *supra* note 16 and accompanying text.

Understanding that rural development schemes accord legal rights, law schools need to teach law, policy and strategies related to poverty alleviation and access to education and health services.<sup>59</sup> Since the standard of living in rural settings often differs dramatically from the comfortable ones in which most lawyers and students reside, there is a lot for lawyers and students to learn about ground realities. Community-based organizations may serve as a bridge to promote such learning and to facilitate planning and communication.<sup>60</sup> More importantly, development entails citizen participation; lawyers and students working with communities must understand their own role as collaborators and facilitators.<sup>61</sup> The National Legal Services Authority (NSLA) plan to establish legal aid clinics in every village or cluster of villages aligns with this vision of community lawyering.

The NLSA authorization given to law schools clinic students to work under the supervision of a lawyer from village offices is a clear sign to the law schools that clinical legal education (CLE) methodology should now be rapidly spread across rural India. The model of CLE is a significant pedagogical tool to realize and actualize the theoretical claims of socially relevant legal education. Literature on CLE offers numerous examples on how law school clinics have successfully contributed in realization of basic human needs for people by subverting the "human rights orthodoxy".<sup>62</sup>

For instance, clinical initiatives in Thailand, South Africa and Ukraine demonstrate how "clinical legal education has a critical role to play in training advocates capable of working at the intersection of law and health".<sup>63</sup> The legal aid clinic, working with the community, can identify important local needs - sanitation in villages, clean drinking water, right to health (primary health centres, distribution of medicines) - and engage the students in enforcement of the rights to basic human needs.<sup>64</sup>

<sup>59</sup> Textbooks on poverty law subjects with Indian law, policy, case excerpts, readings, questions, and problems would help new and experienced law teachers rapidly implement new courses. A fine model is the co-authored textbook by Shyam Divan and Armin Rosencranz, *Environmental Law and Policy: Cases, Statutes and Materials* (2004). It has been observed that when new subjects are introduced, the BCI provides the syllabus and name of the books, but often the books are not available in the Indian market. Prasad, *supra* note 4.

<sup>60</sup> Community-based workers also provide continuity for communities working with the academic cycles of students.

<sup>61</sup> Law schools, State Legal Services Authorities and NGOs that have good knowledge of and working relationships with local communities should collaborate on preparation of community legal resource manuals and on training for community lawyering.

<sup>62</sup> An expression used by Professor Upendra Baxi to signify the limits of western liberal notion of human rights. See generally Upendra Baxi "From Human rights To Right To Be Human: some Heresies", in Upendra Baxi (ed.), *The Right to be Human* 185-199 (1987).

<sup>63</sup> Tamar Ezer, Ludmylla Deshko et al., "Promoting Public Health through Clinical Legal Education: Initiatives in South Africa, Thailand, and Ukraine" 17(2) *Human Rights Brief* 27-33 (2010).

<sup>64</sup> The NUJS "Disaster Management Law Clinic" was a uniquely need-based clinic. This clinic course was initiated to provide legal assistance to the victims affected by a cyclone in 2009 that hit the southern part of

In close collaboration with community based NGOs, the students can introduce the rural communities to their legal rights and entitlements, facilitate discussions with local officials about scheme implementation, and conduct legal aid camps to identify problems for handling or, if a matter requires a lawyer, for referral.

### CLE and Responsible Confrontation of Suffering

What explains the apparent acceptance by people of means in India of the widespread abject impoverishment in the country? We all recognize that it is hard for people of means to face and respond to abject impoverishment on an individual basis. Most people of means in India (and elsewhere) block an emotional reaction or helping response to impoverishment with a rationalization – there is nothing you can do, the problem is too big, corruption diverts the resources, people “game” the system, and so on. But there is no denying the need for action. The highest level of government acknowledges that malnutrition among children in India is a “national shame.”<sup>65</sup>

Law often frames poverty as individual misfortune rather than an injustice. Lawyers are often portrayed as detached experts who know the right answers, and clients as victims in need of a technical service. Structural poverty highlights the need for a different understanding.

As a lawyer serving communities in rural India, it is essential to face up to the ground realities of structural poverty, including suffering. Clinical law teacher Sarah Buhler, seeking a theoretical base for CLE, argues that interaction between the impoverished clients and law students is a “critical pedagogical site of suffering.”<sup>66</sup> She views “suffering as an expression of structural and systemic injustices... (and requires) educators to focus pedagogical attention upon the phenomenon of human suffering.”<sup>67</sup> This critical theory of suffering seeks to unveil the structural, systemic, contextual and global apparatus that produce suffering, and thereby initiate law reforms through legal education within the law schools.

West Bengal. The clinic was set up with the goals of providing free legal services to the victims by organizing legal literacy camps at village level, provide counseling, documentation assistance and representation before administrative and quasi-judicial authorities to accelerate the rehabilitation process. Anirban Chakraborty, “Access To Justice For Victims Of Natural Disaster: The Experience Of ‘Aila’ Victims Relief And Rehabilitation Clinic at NUJS”, paper presented at the International Conference On Good Rural Governance And Citizen Participation organized by JGLS, IRRAD and UBSL in 21-22 March, 2011.

<sup>65</sup> Aarti Dhar, “42 per cent of Indian children are malnourished”, *The Hindu* (Jan. 11, 2012), available at <http://www.thehindu.com/todays-paper/article2791753.ece> (quoting Prime Minister Manmohan Singh’s reaction at the release of a report by the Naandi Foundation on malnutrition of children age five and under).

<sup>66</sup> Sarah Buhler, “Painful Injustices: Clinical Legal Education and the Pedagogy of Suffering” available at <http://library.usask.ca/theses/available/etd-03232011-140745/unrestricted/SarahBuhlerthesis.pdf>.

<sup>67</sup> *Id.* at 108 (emphasis supplied).

Buhler asserts that the pedagogy of suffering requires the clinics and educators to evolve practices of the practices of “critical witnessing”, “critical listening” and “critical emotional praxis”. Critical witnessing of suffering, on one hand, requires that student-client encounter produces adequate legal interventions: first at the level of the individual who needs urgent legal help, and then at the macro level through policy intervention. On the other hand, it also requires the student to witness herself- own reactions, responses to the client as well as client’s experience. It has been argued by clinical theorists that the understanding of a “suffering encounter” can significantly contribute towards the understanding of a student’s professional role as a lawyer as well as the client’s experiences. In the words of Buhler:

the professional identities of law students, as well as their understandings of their clients, can be challenged and reconstituted in and through actual encounters with their clients....law students are not fully formed professional subjects but rather come to their clinical law encounters struggling to invoke and perform the understandings and ideologies about lawyering that they have learned in law school. *The encounter can serve to cement, but also to destabilize these understandings.*<sup>68</sup>

Thus these encounters acknowledge and respect the individual agency of the law student. They further enable them to produce their own understandings of legal profession and the role of lawyers in the larger context of lawyering as an instrument to attain social justice. At the same time they equip them with the potential to transform and investigate the legal structures that are otherwise considered strictly fixed and settled and operating in a rigid and insulated framework.

The third aspect of “pedagogy of suffering” is the development of “critical emotional praxis”. Students’ responses to suffering, like that of the general public, oscillate between sheer emotionlessness/indifference and highly sentimental ones. What is needed is to challenge these paralyzing responses to address the reason of the suffering, to recognize the injustices in the world and then “produce action within the context of particular social and political arrangements.”<sup>69</sup> Buhler asserts that emotions are not irrelevant to law and legal reform; rather they are politically and legally relevant and a source of critical reflection and action based upon such reflection.<sup>70</sup>

### V. Accelerating Rural Access to Justice through Legal Empowerment Strategies

The time is right for consolidating efforts so that rural Indians can meet basic needs and seek access to justice. As we see from the examples of efforts by Indian law teachers in this paper, there are multiple efforts afoot, and there are many more ongoing in India. These efforts are characterized by engagement of law students and teachers with communities near their campuses, and by networking with other area academic institutions, NGOs, district legal services authorities,

<sup>68</sup> *Id.* at 86.

<sup>69</sup> *Id.* at 107.

<sup>70</sup> *Id.* at 113.

judges and lawyers. This section highlights the transformation in approach to improve rural access to justice in India.

### Legal Empowerment of Rural Communities

To meet the legal needs of all sectors of society, we must work towards *legal empowerment*.<sup>71</sup> This includes access to legal information relevant to the impoverished so that they will be able to take advantage of beneficial provisions, and specific measures for women, minorities and other disadvantaged groups.<sup>72</sup>

This calls, as international development specialist Stephen Golub explains, for a shift in working with the impoverished from the traditional "rule of law" paradigm, which centers on judiciaries, the legal profession, and business development as the means to alleviate poverty, to a more balanced paradigm that strengthens citizen participation.<sup>73</sup> Golub defines the paradigm of "legal empowerment" as "the use of legal services and related development activities to increase disadvantaged populations' control over their lives."<sup>74</sup> He describes the balance:

[It] is grounded in grassroots needs and activities but can translate community level work into impact on national laws and institutions. It prioritizes civil society support ... but engages government whenever possible and does not preclude roles for dedicated officials and ministries.<sup>75</sup>

Golub observes the common occurrence that "laws benefitting the poor exist on paper but not in practice unless the poor or their allies push for the laws' enforcement."<sup>76</sup> He argues that legal empowerment requires a sustained effort with the following goals:

- (1) "Attorneys support the poor as partners, instead of dominating them as proprietors of expertise"; thus, the relationship between the lawyer and the client/community is of respect; the emphasis is on strengthening the roles, capacities, and power of the

<sup>71</sup> For a detailed report on legal empowerment, see Commission on Legal Empowerment of the Poor and the United Nations Development Programme, *Making the Law Work for Everyone* (2008) available at <http://www.undp.org/legalempowerment/reports/concept2action.html> (last visited 14 January 2012). The late Dr. Arjun Sengupta was the Indian expert on the Commission.

<sup>72</sup> *Id.* at 6.

<sup>73</sup> Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (2003). Though Golub makes this distinction in the international aid field of law and development, it is useful in regard to the theorization and articulation of the goals of socially relevant legal education in India.

<sup>74</sup> *Id.* at 5.

<sup>75</sup> *Id.* at 3.

<sup>76</sup> *Id.*

disadvantaged and recognizing the agency of the clients/members of disadvantaged community.<sup>77</sup>

- (2) The disadvantaged persons play a role in setting priorities, agendas, objectives and targets, rather than government officials and private/ foreign funding agencies dictating the agenda; this calls for "great(er) attention to domestic ideas and initiatives, or experience from other developing countries, rather than Western imports".<sup>78</sup>
- (3) The definition of "justice sector" includes non-judicial strategies "that transcend narrow notions of legal systems, justice sectors, and institution building"<sup>79</sup>; this calls for a concerted effort to collaborate with "administrative agencies, local governments, informal justice systems, media, community organizing, group formation, or other processes and institutions that can be used to advance the poor's rights and well-being".<sup>80</sup>
- (4) The strategy of sole reliance on law to achieve justice should be given up in favour of using law as a "part of integrated strategies that include other development activities,"<sup>81</sup> such as community organizing, group formation, livelihood development, and literacy training.

Thus, the legal empowerment paradigm calls for lawyers to "strengthen the roles, capacities, and power of the disadvantaged and civil society."<sup>82</sup> It calls for an equal participation of the community/clients as "agents" in the selection of issues and strategies of the project and the goals of the project should be "flowing from the evolving needs and preferences of the poor, rather than starting with a predetermined, top-down focus on judiciaries or other state institutions".<sup>83</sup>

In the realm of legal education, a similar shift is required such that Indian law teachers translate the legal empowerment model into legal pedagogy to secure rural access to justice. Legal education ought to inspire and equip the students of law to seek justice and to empower the communities that are affected by law and its processes. In order to equip law students with the skills to engage with rural communities, reforms in legal education have to be initiated at multiple levels. First of all the extension of the paradigm of legal empowerment into the contemporary

<sup>77</sup> *Id.* at 6, 25-26.

<sup>78</sup> *Id.* The term "disadvantaged" in the legal empowerment definition includes a broader category of persons than the impoverished. It "includes the poor, but also those who face discrimination or abuse as a result of their gender, race, ethnicity, or other personal attributes." *Id.* at 42.

<sup>79</sup> *Id.* at 5.

<sup>80</sup> *Id.* at 26.

<sup>81</sup> *Id.* at 6 (emphasis supplied).

<sup>82</sup> *Id.* at 25.

<sup>83</sup> *Id.*



legal education requires initiation of a programme of "justice services"<sup>84</sup> for and of rural communities.

#### *Methods and Institutions of Justice in the Legal Empowerment Model of Legal Education*

Law teachers must develop pedagogical tools that enable students to acquire skills to develop partnerships with rural communities in the pursuit of justice. "Social accountability" strategies (for instance, social audits and community scorecard) can be effective tools for introducing law students to work with rural communities. Students may work in co-ordination with community paralegals and NGOs who know the communities and employ variegated forms of informal methods in their work.

Vivek Maru, drawing from his experience of "Timap for Justice" in Sierra Leone<sup>85</sup>, asserts that "a strategic blend of the two approaches (legal empowerment and social accountability) would increase the effectiveness and reach of grassroots efforts to advance social justice."<sup>86</sup> He further illustrates how "the two approaches share a focus on the interface between communities and local institutions"<sup>87</sup>; the legal empowerment programmes focus on non-state informal strategies to address community needs, while social accountability tools involve the community in impact assessment and performance of government services. At this intersection, law students and civil society organizations catalyze community mobilization as well as inform the community about governmental schemes, budgetary allocations for the disadvantaged and their entitlements thereunder.

The "Good Governance Now" initiative of JGLS and IRRAD is modeled on the lines of legal empowerment and social accountability approach. Under this framework, legal education is concretized - from abstract notions of rights and justice to enforceable entitlements and capabilities. This law school-NGO-community model exemplifies the encounter between technicians (here law students, lawyers and other experts on rural issues) and laypersons/clients (villagers) as a "pedagogical site of suffering" as discussed in the previous section. Students witness the hollow claims of law in books as they work with the villagers to address their needs

<sup>84</sup> For an account of the working of legal empowerment model and justice services at the grassroots see Vivek Maru, "Allies unknown: social accountability and legal empowerment", 12 *Health and Human Rights in Practice* 83 (2010). While legal services focus entirely on formal institutions of justice (lawyers and judges, for enforcement of enforceable rights and pursuance of legitimate claims of justice), justice services are broad ranged not only in methods and institutions of justice but also re-conceptualize what are legitimate and enforceable claims of individuals.

<sup>85</sup> Timap For Justice is a program initiated by the Sierra Leonean National Forum for Human Rights (NFHR) and the Open Society Justice Initiative to deliver basic justice services at the local level through community-based paralegals. For the experience of program see Vivek Maru, "Between Law and Society: Paralegals and the Provision of Justice Services", 31 *The Yale Journal of International Law* 428 (2006).

<sup>86</sup> *Supra* note 84 at 84.

<sup>87</sup> *Id.*

and problems. The focus is on creating a cadre of dedicated "barefoot social mobilizers"<sup>88</sup> by training paralegals at the gram panchayat level.

The strategies of this model are in sync with the objectives laid down by the Planning Commission with respect to furthering rural development.<sup>89</sup> The law students from JGLS prepare information manuals for villagers in Mewat on their entitlements under government schemes such as Mid-day Meal, Public Distribution System, and MNREGA. IRRAD works as the resource centre, trains selected villagers as paralegals, equips them with tools, such as making a record of requests and filing under Right to Information, and strategies to ensure accountability and transparency in the working of government programmes. For instance, women trainees learn to monitor Anganwadis (child care centers) and government schools in their respective villages to supervise the working of these institutions and exercise collective pressure where the services are dysfunctional. The social audit strategies of Good Governance Now model can gather momentum and legitimacy as the process of social audit is further institutionalized in India.<sup>90</sup>

#### *Establishing Competent Law School Legal Aid Clinics*

Law schools can become sites of access to justice if they "open up" to the communities around them. Today there significant numbers of universities that stand on agricultural land and are surrounded by villages. The clinics of such law schools can and should become legal aid and dispute resolution centres for the local area if a working relationship can be established between the law school, faculty and students with the villages. This relationship requires sustained effort from the side of law school faculty and students, beyond setting up a clinic and holding occasional legal literacy camps. There must be a concerted effort to make it accessible and justice-oriented for rural communities. The clinic should publicize its hours and services. Students should regularly visit communities and assist or refer matters that come to their attention. These objectives can be attained only by institutionalizing clinical courses and creating an environment in which students take their own social responsibility seriously.<sup>91</sup>

<sup>88</sup> *Supra* note 54 at 253.

<sup>89</sup> According to the Planning Commission every village must have "a 'barefoot' social mobilizer", with the responsibilities of: (1) generating awareness about governmental schemes and peoples' entitlements thereunder, (2) ensuring participation of the marginalized—SCs/STs, women, and the poor—will remain peripheral to decision-making in gram sabhas and gram panchayats and (3) strengthening the process of social audits, thereby creating greater transparency and accountability in the programme. *Id.*

<sup>90</sup> For instance the Andhra Pradesh (A.P.) Society for Social Audit and Transparency (APSSAT) has taken a major step in the direction of institutionalizing the process of social audit in A.P. and ensuring independence of the auditor from the implementer. The success of MNREGA in A.P. can be attributed to social audits. *Id.* at 258.

<sup>91</sup> In this regard, National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 are noteworthy. The Regulations mandate every District Legal Services Authority to establish legal aid clinics in all villages, or for a cluster of villages (clause 3), every legal aid to have at least two para-legal volunteers available during the working hours of the legal aid clinics (clause 5), dispute settlement by paralegal

Legal aid clinics can operate effectively despite the ban on full time professors to practice law.<sup>92</sup> As long as this prohibition remains in force, there is need to attract and engage practicing lawyers to ably supervise students in community legal work. Faculty supervisors have some options. For instance, "(d)espite the ban on students and faculty representing clients, law school clinical programs are able to engage in public interest litigation (PIL), a uniquely open process that allows nonlawyers to raise issues of public interest (PIL)...Clinical students and their faculty supervisors have brought PIL cases on a wide variety of issues, taking responsibility for the full range of tasks involved including appearing before the court, thereby offering students the opportunity to develop important advocacy and litigation skills".<sup>93</sup>

Also, as encouraged by the National Legal Services Authority, law school clinics can offer much-needed paralegal support to the community. Legal aid consultation clinics that engage students in providing free paralegal services to the disadvantaged communities - drafting affidavits, filling out forms for social welfare benefits, assistance in filing Right to Information requests - are an important example of CLE programmes making meaningful contributions to access to justice.

To spread best practices in legal aid clinics, law schools should consolidate efforts towards building a national CLE network, a common platform for law school clinics to share resources. This can include classroom materials, relevant readings, lawyer training manuals and other poverty law practice tools. Non-governmental organizations, legal services authorities and national human rights institutions and practitioners would be key partners in this network.

South African clinical experience is particularly noteworthy in this regard. The Association of University Legal Aid Institutions (AULAI), a South African national CLE network<sup>94</sup> has played significant role as a national clinical network: "First, it commissioned surveys to "map" the geographical gaps in the availability of legal aid to South Africans. It also combined forces with an NGO paralegal network to gain membership on and influence funding decisions by the

personnel (clause 16), student engagement with rural community adoption of villages (clauses 22-23), and collaboration between law students and community paralegals (clause 25).

<sup>92</sup> Bar Council of Rules, Part VI, Chapter II, Rule 49 available at <http://lawmin.nic.in/la/subord/bcpart6.htm#chapter3>.

Rule 49 reads: "An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment."

Also see, "Rules Made By The Central Government Under Section 49-A Of The Advocates Act, 1961 Re : Right Of Practising Advocates To Take Up Law Teaching" available at <http://lawmin.nic.in/la/subord/bcpart9.htm>.

<sup>93</sup> Lasky and Prasad, *supra* note 4 at 46.

<sup>94</sup> AULAI is a voluntary association of all South African University Law Clinics, established in approximately 1982, to promote and protect the interests, values and goals of its members. The Association of University Legal Aid Institutions has set up the AULAI Trust with an endowment from the Ford Foundation to strengthen the funding of the clinics. Available at <http://www.aulai.co.za/home>.

nation's official Legal Aid Board, correcting misallocation of Board funds in the process. As a result, clinics and paralegals across the country are receiving government support to provide legal aid to the citizenry, at what are called local "justice centers."<sup>95</sup> Such unified and concerted efforts can go a long way in bridging the gaps between the demand and supply of justice services, as well as in sharing best practices of socially relevant legal education and rural access to justice.

## VI. Conclusion

In 2010, India's Law Minister acknowledged the need for special efforts to serve the rural masses: "An alternate programme for rural lawyering and public interest lawyering will be instituted to ensure that Access to Justice is a right guaranteed equally to the rural poor, who seem to be outside the formal system today."<sup>96</sup>

Rural communities need access to their legal rights, beginning with the basic necessities of safe drinking water, food, sanitation, health and education services, and a minimum guarantee of rural employment. Using a combination of legal empowerment and social audit strategies, some law students and faculty contribute to providing rural access to justice within the existing laws.

The movement for law schools and state legal services authorities to collaborate on provision of legal aid to the rural poor is an important step in making rural access to justice a reality. Training for lawyers, law teachers, law students and paralegals on legal empowerment techniques requires a serious investment of resources and effort. The Indian legal education community should step forward to play a leadership role along with the legal services authorities and practicing lawyers to develop training resources, develop expertise in rural legal issues, develop and replicate successful law clinic models and provide avenues for seeking advice on effective approaches to rural legal issues.

<sup>95</sup> Stephen Golub, "Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation" 10 (2004) available at <http://www.gsdrc.org/docs/open/BB100.pdf>.

<sup>96</sup> *Supra* note 16.